

SENATE FINANCE COMMITTEE SUBSTITUTE FOR  
SENATE BILL 30

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING A NEW SECTION OF THE ENVIRONMENTAL IMPROVEMENT ACT TO PROVIDE FOR ASSISTANCE TO INDIGENT PERSONS TO REPLACE SUBSTANDARD LIQUID WASTE DISPOSAL SYSTEMS; CREATING A FUND; PROVIDING FOR DISTRIBUTIONS; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Environmental Improvement Act is enacted to read:

"NEW MATERIAL LIQUID WASTE DISPOSAL SYSTEM ASSISTANCE FUND--CREATED--PURPOSE.--

A. The "liquid waste disposal system assistance fund" is created in the state treasury. The department shall administer the fund. The fund is composed of appropriations, donations and transfers of money earned from investment of the

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underscored material = new  
[bracketed material] = delete

1 fund and otherwise accruing to the fund and transfers of money  
2 from the liquid waste fund, the water quality management fund  
3 or the corrective action fund. Balances remaining in the fund  
4 at the end of a fiscal year shall remain to the credit of the  
5 fund. Disbursements from the fund shall be drawn on warrant of  
6 the secretary of finance and administration pursuant to  
7 vouchers signed by the secretary of environment or the  
8 secretary's authorized representative. Money in the fund is  
9 appropriated to the department for the sole purpose of  
10 assisting indigent individuals or households that qualify for  
11 funding to accomplish one of the following purposes where there  
12 is a real or potential negative impact to public health or  
13 water quality from on-site liquid waste disposal system  
14 effluent:

15 (1) to pay for a liquid waste disposal system  
16 to replace a cesspool or other failed or improper on-site  
17 liquid waste disposal system;

18 (2) to purchase, install or maintain an  
19 advanced treatment system as required by the Environmental  
20 Improvement Act or regulations issued pursuant to that act;

21 (3) to pay for the decommissioning and removal  
22 of a cesspool or other failed or improper on-site liquid waste  
23 disposal system; or

24 (4) to pay for all or a portion of the  
25 connection fees in order to connect an individual or household

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1 to a centralized wastewater collection and treatment system.

2 B. Construction activities sponsored by the fund  
3 shall be performed by licensed contractors selected through  
4 competitive bid by the department and shall be managed by the  
5 department.

6 C. No more than five percent of the fund shall be  
7 used by the department on an annual basis to pay for the  
8 department costs associated with management and implementation  
9 of fund activities.

10 D. As used in this section:

11 (1) "advanced treatment system" means an on-  
12 site liquid wastewater treatment system that removes a greater  
13 amount of contaminants than is accomplished by a primary  
14 treatment system;

15 (2) "connection fee" means the fee paid  
16 directly to a public water or wastewater system or other  
17 wastewater management organization and does not include other  
18 fees, such as legal fees, related to connecting an individual  
19 or household to a centralized wastewater collection and  
20 treatment system; and

21 (3) "indigent individuals or households" means  
22 individuals or households whose annual incomes do not exceed  
23 the federal poverty guidelines."

24 Section 2. Section 74-1-15 NMSA 1978 (being Laws 2000,  
25 Chapter 96, Section 3) is amended to read:

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1           "74-1-15. LIQUID WASTE FUND CREATED.--The "liquid waste  
2 fund" is created in the state treasury. On-site liquid waste  
3 system fees shall be deposited in the fund. Money in the fund  
4 is appropriated to the department for administration of liquid  
5 waste regulations, and money in the fund is appropriated to the  
6 liquid waste disposal system assistance fund and the water and  
7 wastewater system management assistance fund, if enacted into  
8 law by the first session of the forty-ninth legislature.  
9 Disbursements from the fund shall be by warrant drawn by the  
10 secretary of finance and administration pursuant to vouchers  
11 signed by the secretary of environment or [~~his~~] the secretary  
12 of environment's designee. Any unexpended or unencumbered  
13 balance or income earned from the money in the liquid waste  
14 fund remaining at the end of any fiscal year shall not revert  
15 to the general fund."

16           Section 3. Section 74-6-5.2 NMSA 1978 (being Laws 1993,  
17 Chapter 100, Section 4) is amended to read:

18           "74-6-5.2. WATER QUALITY MANAGEMENT FUND CREATED.--There  
19 is created in the state treasury the "water quality management  
20 fund" to be administered by the department of environment. All  
21 fees collected pursuant to the regulations adopted by the  
22 commission under Subsection [H] J of Section 74-6-5 NMSA 1978  
23 shall be deposited in the fund. Money in the fund is  
24 appropriated to the department of environment for the purpose  
25 of administering the regulations adopted by the commission

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1 pursuant to Section 74-6-5 NMSA 1978, and money in the fund is  
 2 appropriated to the liquid waste disposal system assistance  
 3 fund and the water and wastewater system management assistance  
 4 fund, if enacted into law by the first session of the forty-  
 5 ninth legislature. Disbursements from the fund shall be made  
 6 upon warrants drawn by the secretary of finance and  
 7 administration pursuant to vouchers signed by the secretary of  
 8 environment."

9 Section 4. Section 74-6B-7 NMSA 1978 (being Laws 1990,  
 10 Chapter 124, Section 7, as amended) is amended to read:

11 "74-6B-7. CORRECTIVE ACTION FUND CREATED--AUTHORIZATION  
 12 FOR EXPENDITURES.--

13 A. There is created the "corrective action fund".  
 14 The fund is intended to provide for financial assurance  
 15 coverage and shall be used by the department to the extent that  
 16 revenues are available to take corrective action in response to  
 17 a release, to pay for the costs of a minimum site assessment in  
 18 excess of ten thousand dollars (\$10,000), to pay the state's  
 19 share of federal leaking underground storage tank trust fund  
 20 cleanup costs as required by the federal Resource Conservation  
 21 and Recovery Act, [~~and~~] to make payments to or on behalf of  
 22 owners and operators for corrective action taken in accordance  
 23 with Section 74-6B-13 NMSA 1978 and to transfer money to the  
 24 liquid waste disposal system assistance fund and the water and  
 25 wastewater system management assistance fund, if enacted into

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1 law by the first session of the forty-ninth legislature. The  
2 legislature may appropriate up to thirty percent of the annual  
3 distribution to the fund pursuant to Section 7-1-6.25 NMSA 1978  
4 to the department to match federal funds, for underground  
5 contamination cleanup and to address water needs. The owner or  
6 operator of a site shall not use the corrective action fund as  
7 evidence of financial assurance to satisfy claims of third  
8 parties.

9 B. The board, after recommendations from the  
10 storage tank committee, shall adopt rules for establishing  
11 priorities for corrective action at sites contaminated by  
12 storage tanks. The priorities for corrective action shall be  
13 based on public health, safety and welfare and environmental  
14 concerns. In adopting rules pursuant to this subsection, the  
15 board shall follow the procedures of Section 74-4-5 NMSA 1978.  
16 The provisions of that section relating to all other matters in  
17 connection with the adoption of rules shall apply. The  
18 department shall establish priority lists of sites in  
19 accordance with the rules adopted by the board.

20 C. The department shall make expenditures from the  
21 corrective action fund in accordance with rules adopted by the  
22 board or the secretary for corrective action taken by the  
23 state, owners or operators at sites contaminated by storage  
24 tanks; provided that:

25 (1) payments may be made only for corrective

1 action taken by persons qualified by the department to perform  
2 the work pursuant to rules adopted by the board;

3 (2) no expenditures from the fund shall be  
4 paid to or on behalf of an owner or operator for corrective  
5 action, other than a minimum site assessment or sampling, if  
6 the corrective action is conducted by a person that is a  
7 subsidiary or parent of or that is otherwise affiliated with  
8 the owner or operator;

9 (3) expenditures shall be made by the  
10 department to perform corrective action, to pay for the costs  
11 of minimum site assessment in excess of ten thousand dollars  
12 (\$10,000) or to make payments to or on behalf of an owner or  
13 operator in accordance with Section 74-6B-13 NMSA 1978;

14 (4) any corrective action taken shall be taken  
15 at sites in the order of priority appearing on the priority  
16 lists, unless an emergency threat to public health, safety and  
17 welfare or to the environment exists;

18 (5) when available revenues are limited and  
19 the fund can no longer be approved as a financial  
20 responsibility mechanism, priorities for expenditures from the  
21 fund shall also be based on financial need as determined by  
22 rules adopted by the board; and

23 (6) corrective action involving remediation  
24 shall follow a competitive bidding procedure based on technical  
25 merit and cost effectiveness.

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